

## § 23.12

and numerals medium blue (Coast Guard blue), white area within ring, shield with medium blue (Coast Guard blue) chief and 13 alternating white and red (Coast Guard red) stripes (7 white and 6 red) with narrow medium blue (Coast Guard blue) outline.

(c) The Coast Guard emblem is intended primarily for use as identification on Coast Guard ensigns, flags, pennants, vessels, aircraft, vehicles, and shore units. It may also be reproduced for use on such items as stationery, clothing, jewelry, etc.

(d) Any person who desires to reproduce the Coast Guard emblem for non-Coast Guard use must first obtain approval from the Commandant, U.S. Coast Guard, Washington, D.C. 20593.

(Sec. 6(b)(1), 80 Stat. 937; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

[CGFR 67-26, 32 FR 6577, Apr. 28, 1967, as amended by CGFR 70-95, 35 FR 12541, Aug. 6, 1970]

## § 23.12 Coast Guard identifying insignia.

(a) The distinctive identification insignia of the Coast Guard consists of a broad diagonal red stripe followed to the right or left by two narrow stripes, first a white stripe and then a blue stripe. The Coast Guard emblem, as described in § 23.10(b), is centered within the confines of the broad red diagonal stripe.

(b) The Coast Guard identifying insignia is intended primarily for the identification of Coast Guard vessels, aircraft, vehicles, and shore units. It may also be reproduced for use on Coast Guard publications, stationery, jewelry, and similar items.

(c) Any person who desires to reproduce the Coast Guard identifying insignia for non-Coast Guard use must first obtain approval from the Commandant, U.S. Coast Guard, Washington, D.C. 20593.

(Sec. 6(b)(1), 80 Stat. 937; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

[CGFR 70-95, 35 FR 12541, Aug. 6, 1970]

## § 23.15 Coast Guard ensign.

The Coast Guard ensign has sixteen perpendicular stripes alternate red and white, beginning with the red at the hoist. In the upper quarter, next to the hoist, is the union, being the Coat of

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Arms of the United States, in dark blue on a white field, half of the length of the flag, and extending down the hoist halfway. The distinctive emblem of the Coast Guard in blue and white is placed with its center on a line with the lower edge of the union and over the center of the seventh vertical red stripe from the hoist of the flag, the emblem covering a horizontal space of three stripes.

[CGFR 57-35, 22 FR 6765, Aug. 22, 1957]

## § 23.20 Coast Guard commission pennant.

The Coast Guard commission pennant shall have the union part composed of thirteen blue stars in a horizontal line on a white field, one-fourth the length of the pennant; the remaining three-fourths shall consist of sixteen vertical stripes of equal width, alternate red and white, beginning with the red, and a tail piece of red about one-fifth the entire length of the pennant, ending in a swallow tail.

[CGFR 57-35, 22 FR 6765, Aug. 22, 1957, as amended by CGFR 71-75, 36 FR 13268, July 17, 1971]

## § 23.30 Penalty.

Section 638(b) of Title 14 U.S.C. (63 Stat. 546) reads as follows:

No vessel or aircraft without authority shall carry, hoist or display any ensign, pennant or other identifying insignia prescribed for, or intended to resemble, any ensign, pennant or other identifying insignia prescribed for Coast Guard vessels or aircraft. Each person violating this provision shall be fined not more than \$5,000, or imprisoned for not more than two years, or both.

[CGFR 57-35, 22 FR 6765, Aug. 22, 1957]

## PART 25—CLAIMS

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AUTHORITY: 14 U.S.C. 633; 49 CFR 1.45(a); 49 CFR 1.45(b); 49 CFR 1.46(b), unless otherwise noted.

SOURCE: CGD 80-033, 46 FR 27109, May 18, 1981, unless otherwise noted.

## Subpart A—General

### § 25.101 Purpose.

This subpart prescribes the requirements for the administrative settlement of claims against the United States, other than claims against the Oil Spill Liability Trust Fund under part 136 of this chapter and contract claims, but including claims arising from acts or omissions of employees of non-appropriated fund activities within the United States, its territories, and possessions.

[USCG-2001-9286, 66 FR 33639, June 25, 2001]

### § 25.103 Information and assistance.

Any person who desires to file a claim against the United States Coast Guard arising out of the activities of the Coast Guard may obtain information and assistance from the Coast Guard Maintenance and Logistics Command Atlantic (lc), located at 300 East Main Street, Suite 965, Norfolk, VA 23510-9113 or from the Coast Guard Maintenance and Logistics Command Pacific (lc), located at Coast Guard Island, Alameda, California, 94501, or from Commandant (G-LCL), U.S. Coast Guard, Washington, DC 20593, or from the Commander of any Coast Guard District listed in 33 CFR Part 3.

[CGD 87-008b, 52 FR 25217, July 6, 1987, as amended by CGD 97-023, 62 FR 33362, June 19, 1997; USCG-2001-9286, 66 FR 33639, June 25, 2001]

### § 25.105 Definitions.

*Accrual date.* The day on which the alleged wrongful act or omission results in injury or damage for which a claim is made or when the claimant discovers, or in the exercise of reasonable diligence should have discovered, the alleged wrongful act or omission.

*Claim.* A written notification of an incident accompanied by demand for the payment of a sum certain of money, other than for ordinary obligations incurred for services, supplies, or equipment.

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*Settle.* To consider, ascertain, adjust, determine, compromise (when specifically authorized by law), and dispose of a claim by disapproval or approval, in whole or in part.

*Settlement authority.* A person authorized to settle a claim.

[CGD 80-033, 46 FR 27109, May 18, 1981; 46 FR 29933, June 4, 1981]

### § 25.107 Who may present claims.

(a) General rules:

(1) A claim for property loss or damage may be presented by anyone having an interest in the property, including an insurer or other subrogee, unless the interest is barred under § 25.109(a).

(2) A claim for personal injury may be presented by the person injured.

(3) A claim based on death may be presented by the executor or administrator of the decedent's estate, or any other person legally entitled to assert such a claim under local law. The claimant's status must be stated in the claim.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has, in fact, incurred the expenses.

(b) A joint claim must be presented in the names of and signed by, the joint claimants, and the settlement must be made payable to the joint claimants.

(c) A claim may be presented by a duly authorized agent, legal representative or survivor, if it is presented in the name of the claimant. If the claim is not signed by the claimant, the agent, legal representative, or survivor shall indicate their title or legal capacity and provide evidence of their authority to present the claim.

(d) Where the same claimant has a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of the same incident, they must be combined in one claim.

### § 25.109 Insurance and other subrogated claims.

(a) The claims of an insured (subrogor) and an insurer (subrogee) for damages arising out of the same incident constitute a single claim. The total award of combined claims may not exceed the monetary jurisdiction of

the settlement authority. If the total award of the combined claims exceeds, or is expected to exceed, a settlement authority's limits, the settlement authority is not permitted to consider either, and the claim file will be forwarded to an appropriate settlement authority.

(b) An insured (subrogor) and an insurer (subrogee) may file a claim jointly or separately. If the insurer has fully reimbursed the insured, payment will only be made to the insurer. If separate claims are filed, the settlement will be made payable to each claimant to the extent of that claimant's undisputed interest. If joint claims are filed, the settlement will be sent to the insurer.

(c) Each claimant shall include with a claim, a written disclosure concerning insurance coverage including:

(1) The names and addresses of all insurers;

(2) The kind and amount of insurance;

(3) The policy number;

(4) Whether a claim has been or will be presented to an insurer, and, if so, the amount of that claim; and whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

(d) Each subrogee shall substantiate an interest or right to file a claim by appropriate documentary evidence and shall support the claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence of liability of the United States or conclusive evidence of the amount of damages. The settlement authority makes an independent determination on the issues of fact and law based upon the evidence of record.

(e) An insurance or other subrogated claim is not payable under Subpart E, F, or G of this part.

### § 25.111 Action by claimant.

(a) *Form of claim.* The claim must meet the requirements of § 25.113. Authorized forms are available from the offices indicated in § 25.103.

(b) *Presentation.* Whenever possible, the claim must be presented to the Coast Guard Legal Service Command,

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Claims Division (LSC-5), located at 300 East Main Street, Suite 400, Norfolk, VA 23510-9100. If that is not possible, the claim may also be presented to:

- (1) The commanding officer of the Coast Guard unit involved;
- (2) A Coast Guard unit convenient to the claimant; or
- (3) Chief, Office of Claims and Litigation, Chief Counsel, United States Coast Guard, 2100 Second Street, SW., Washington, DC, 20593.

In a foreign country, where there is no Coast Guard unit, the claim is considered presented to the Coast Guard if it is presented to the military attache of any United States embassy or consulate or to the commanding officer of any unit of the armed services of the United States.

(c) *Time.* The time limits for presenting claims are contained in the following subparts addressing particular claim statutes.

[CGD 80-033, 46 FR 27109, May 18, 1981, as amended by CGD 87-008b, 52 FR 25217, July 6, 1987; CGD 97-023, 62 FR 33362, June 19, 1997; USCG-2001-9286, 66 FR 33639, June 25, 2001; USCG-2009-0416, 74 FR 27437, June 10, 2009]

### § 25.113 Contents of claim.

(a) A claim under the Federal Tort Claims Act must be presented using Standard Form 95, Claim for Damage, Injury, or Death.

(b) A claim under any other Act may be presented using Standard Form 95. Any claim which is not presented using Standard Form 95 shall include:

- (1) The identity of the department, agency, or activity whose act or omission gave rise to the claim;
- (2) The full name and mailing address of the claimant. If this mailing address is not claimant's residence, the claimant shall also include residence address;
- (3) The date, time, and place of the incident giving rise to the claim;
- (4) The amount claimed, supported by independent evidence of property damage or loss, personal injury, or death, as applicable;
- (5) A detailed description of the incident giving rise to the claim;
- (6) A description of any property damage or loss, including the identity of the owner, if other than the claimant, as applicable;

(7) The nature and extent of the injury, as applicable;

(8) The full name, title, if any, and address of any witness to the incident and a brief statement of the witness' knowledge of the incident;

(9) A description of any insurance carried by the claimant or owner of the property and the status of any insurance claim arising from the incident; and

(10) An agreement by the claimant to accept the total amount claimed in full satisfaction and final settlement of the claim.

(c) A claimant or duly authorized agent or legal representative must sign in ink a claim and any amendment to that claim. If the person's signature does not include the first name, middle initial, if any, and surname, that information must be included in the claim. A married woman must sign her claim in her given name, e.g., "Mary A. Doe," rather than "Mrs. John Doe."

### § 25.115 Evidence supporting a claim.

The claimant shall present independent evidence to support a claim. This evidence may include, if available, statements of witnesses, accident or casualty reports, photographs and drawings.

### § 25.117 Proof of amount claimed for personal injury or death.

The following evidence must be presented when appropriate:

- (a) Itemized medical, hospital, and burial bills.
- (b) A written report by the attending physician including:
  - (1) The nature and extent of the injury and the treatment,
  - (2) The necessity and reasonableness of the various medical expenses incurred,
  - (3) Duration of time injuries prevented or limited employment,
  - (4) Past, present, and future limitations on employment,
  - (5) Duration and extent of pain and suffering and of any disability or physical disfigurement,
  - (6) A current prognosis,
  - (7) Any anticipated medical expenses, and

(8) Any past medical history of the claimant relevant to the particular injury alleged.

NOTE: An examination by an independent medical facility or physician may be required to provide independent medical evidence against which to evaluate the written report of the claimant's physician. The settlement authority determines the need for this examination, makes mutually convenient arrangements for such an examination, and bears the costs thereof.

(c) All hospital records or other medical documents from either this injury or any relevant past injury.

(d) If the claimant is employed, a written statement by the claimant's employer certifying the claimant's:

- (1) Age,
- (2) Occupation,
- (3) Hours of employment,
- (4) Hourly rate of pay or weekly salary,

(5) Time lost from work as a result of the incident, and

(6) Claimant's actual period of employment, full-time or part-time, and any effect of the injury upon such employment to support claims for lost earnings.

(e) If the claimant is self-employed, written statements, or other evidence showing:

- (1) The amount of earnings actually lost, and
- (2) The Federal tax return if filed for the three previous years.

(f) If the claim arises out of injuries to a person providing services to the claimant, statement of the cost necessarily incurred to replace the services to which claimant is entitled under law.

**§ 25.119 Proof of amount claimed for loss of, or damage to, property.**

The following evidence must be presented when appropriate:

(a) For each particular lost item, evidence of its value such as a bill of sale and a written appraisal, or two written appraisals, from separate disinterested dealers or brokers, market quotations, commercial catalogs, or other evidence of the price at which like property can be obtained in the community. The settlement authority may waive these requirements when circumstances warrant. The cost of any appraisal may be included as an element of damage if

not deductible from any bill submitted to claimant.

(b) For each particular damaged item which can be economically repaired, evidence of cost of repairs such as a receipted bill and one estimate, or two estimates, from separate disinterested repairmen. The settlement authority may waive these requirements when circumstances warrant. The cost of any estimate may be included as an element of damage if not deductible from any repair bill submitted to claimant.

(c) For any claim which may result in payment in excess of \$20,000.00, a survey or appraisal shall be performed as soon as practicable after the damage accrues, and, unless waived in writing, shall be performed jointly with a government representative.

(d) If the item is so severely damaged that it cannot be economically repaired or used, it shall be treated as a lost item.

(e) If a claim includes loss of earnings or use during repairs to the damaged property, the following must also be furnished and supported by competent evidence:

- (1) The date the property was damaged;
- (2) The name and location of the repair facility;
- (3) The beginning and ending dates of repairs and an explanation of any delay between the date of damage and the beginning date;
- (4) A complete description of all repairs performed, segregating any work performed for the owner's account and not attributable to the incident involved, and the costs thereof;
- (5) The date and place the property was returned to service after completion of repairs, and an explanation, if applicable, of any delay;
- (6) Whether or not a substitute for the damaged property was available. If a substitute was used by the claimant during the time of repair, an explanation of the necessity of using the substitute, how it was used, and for how long, and the costs involved. Any costs incurred that would have been similarly incurred by the claimant in using the damaged property must be identified;
- (7) Whether or not during the course of undergoing repairs the property

would have been used, and an explanation submitted showing the identity of the person who offered that use, the terms of the offer, time of prospective service, and rate of compensation; and

(8) If at the time of damage the property was under charter or hire, or was otherwise employed, or would have been employed, the claimant shall submit a statement of operating expenses that were, or would have been, incurred. This statement shall include wages and all bonuses which would have been paid, the value of fuel and the value of consumable stores, separately stated, which would have been consumed, and all other costs of operation which would have been incurred including, but not limited to, license and parking fees, personnel expenses, harbor fees, wharfage, dockage, shedding, stevedoring, towage, pilotage, inspection, tolls, lockage, anchorage and moorage, grain elevation, storage, and customs fees.

(f) For each item which is lost, actual or constructive, proof of ownership.

**§ 25.121 Effect of other payments to claimant.**

The total amount to which the claimant may be entitled is normally computed as follows:

(a) The total amount of the loss, damage, or personal injury suffered for which the United States is liable, less any payment the claimant has received from the following sources:

(1) The military member or civilian employee who caused the incident;

(2) The military member's or civilian employee's insurer; and

(3) Any joint tort-feasor or insurer.

(b) No deduction is generally made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

**§ 25.123 Settlement and notice to claimant.**

(a) If the settlement authority determines that the full amount claimed should be paid, the settlement authority forwards the claim to the disbursing officer for payment. If the time involved in settling the claim has been extensive, the settlement authority notifies the claimant.

(b) If the settlement authority determines that less than the full amount claimed should be paid, the settlement authority:

(1) Notifies the claimant in writing of the proposed settlement.

(2) Obtains from the claimant written acceptance and release for payment of the claim in the reduced amount.

(3) Advises the claimant, in the event claimant does not desire to accept the offer, to reply within 45 days giving reasons for rejection.

(4) Except upon a showing of good cause for delay in accepting a proposed settlement within 45 days, treats the non-acceptance as a rejection. Rejection by a claimant of an offer of settlement renders the offer void.

(5) If a claimant rejects a proposed settlement or fails to reply within 45 days, the settlement authority may make further efforts to settle the claim. When the settlement authority determines that further efforts to settle the claim are not warranted, the settlement authority notifies the claimant in writing by registered or certified mail, return receipt requested, that the claim has been denied because the amount claimed is excessive.

(c) If the claim is denied, the settlement authority notifies the claimant in writing by registered or certified mail, return receipt requested.

**§ 25.125 Appeal.**

The final denial of a claim by a settlement authority or a partial approval by a settlement authority is not subject to appeal except under the procedures prescribed for Military Claims in Subpart D of this part.

**§ 25.127 Reconsideration.**

(a) The settlement authority may reconsider a claim upon the authority's own initiative or upon request of the claimant or someone acting on the claimant's behalf.

(b) A request for reconsideration must be in writing and include the legal or factual grounds for the relief requested.

(c) Following any investigation or other action deemed necessary for reconsideration of the original action, the settlement authority reconsiders

the claim and if warranted attempts to settle it. When further settlement efforts appear unwarranted, the settlement authority notifies the claimant in writing by certified or registered mail, return receipt requested, that the relief requested is denied.

(d) For the effect of reconsideration under the Federal Tort Claims Act see 28 CFR Part 14.

**§ 25.129 Acceptance of offer of settlement.**

Claimant's acceptance of an offer of settlement is a complete release of any claim against the United States and against the military or civilian personnel of the Coast Guard whose act or omission gave rise to the claim.

**§ 25.131 Delegation of authority.**

(a) The Chief Counsel is delegated the following authority:

(1) To carry out the functions of the Secretary and to exercise the Commandant's authority as commanding officer for all Coast Guard personnel in regard to claims brought under Article 139, Uniform Code of Military Justice (10 U.S.C. 939);

(2) To carry out the functions of an officer designated by the Secretary under the so-called "Foreign Claims Act", as amended (10 U.S.C. 2734);

(3) To request that the Department of Defense pay any meritorious claims arising under International Agreements in accordance with Title 10 U.S.C. 2734a and 2734b;

(4) To carry out the functions of the Secretary under the Act of October 9, 1962, as amended (10 U.S.C. 2737);

(5) To carry out the functions of the Secretary under the Act of August 16, 1937, as amended (14 U.S.C. 642);

(6) To carry out the functions of the Secretary under the Act of June 15, 1936, as amended (14 U.S.C. 646);

(7) To carry out the functions of the Secretary under the Act of August 4, 1949, as amended (14 U.S.C. 647);

(8) To carry out the functions of the Secretary under the Act of February 19, 1941, as amended (14 U.S.C. 830);

(9) To carry out the functions of the head of a Federal agency's designee under the Federal Tort Claims Act, as amended (28 U.S.C. 2672);

(10) To carry out the functions of the head of an agency under the Military Personnel and Civilian Employees' Claims Act, as amended (31 U.S.C. 3721);

(11) To carry out the functions of the head of an agency under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711);

(12) To carry out the functions of the head of the department under the Federal Medical Care Recovery Act (42 U.S.C. 2651–2653);

(13) To review and approve for payment any voucher for payment of a claim for \$25 or less the authority for payment of which is questioned by a certifying or disbursing officer;

(14) To establish procedures consistent with the applicable statutes and regulations for the administration of all claims.

NOTE: Under the Military Claims Act (10 U.S.C. 2733), the Secretary has authorized the Chief Counsel to settle and pay claims, see 49 CFR 1.46(j).

(b) The Director of Finance and Procurement is delegated the authority to carry out the functions of the head of an agency under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711).

[CGD 80–033, 46 FR 27109, May 18, 1981, as amended by CGD 82–112, 48 FR 4773, Feb. 3, 1983; USCG–2001–9286, 66 FR 33639, June 25, 2001]

**§ 25.133 Redelelegation of authority.**

The authority delegated in § 25.131 and in 49 CFR 1.46(j) to the Chief Counsel may, unless otherwise limited, be redelegated in whole or in part to settlement authorities established by the Chief Counsel. Information concerning current settlement authorities is available from the offices indicated in § 25.103.

**§ 25.135 Processing and settlement of claims in foreign countries.**

(a) In certain countries, the Department of Defense has assigned single-service responsibility for the settlement of claims arising under the Foreign Claims Act, Military Claims Act, Nonscope of Employment Claims Act, Federal Medical Care Recovery Act, and Federal Claims Collection Act.

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(b) In a country where single-service claims responsibility has been assigned, claims against the United States cognizable under the acts referenced in paragraph (a) of this section are processed and settled by the service assigned responsibility.

(c) A list of countries assigned to a single-service is available from the military attache at any United States embassy or consulate.

(d) In a country not assigned to a single-service, the rules for presenting claims may be found in § 25.111, and the claim will be settled by the Coast Guard.

### Subpart B—Admiralty Claims

AUTHORITY: 14 U.S.C. 646; 14 U.S.C. 633; 49 CFR 1.46(b).

#### § 25.201 Scope.

This subpart prescribes the requirements for the administrative settlement of maritime tort claims against the United States for death, personal injury, damage to or loss of property caused by a vessel or other property in the service of the Coast Guard, or a maritime tort committed by an agent of the Coast Guard, and for claims for towage and salvage services rendered to a Coast Guard vessel or property.

#### § 25.203 Claims payable.

A claim is payable under this subpart if it is:

(a) A claim for death, personal injury, damage to or loss of real or personal property arising from a maritime tort caused by an agent or employee of the Coast Guard, or a vessel or other property in the service of the Coast Guard, including an auxiliary facility operated under specific orders and acting within the scope of such orders; or

(b) A claim for compensation for towage and salvage services rendered to a vessel in the service of the Coast Guard or to other property under the jurisdiction of the Coast Guard.

#### § 25.205 Claims not payable.

A claim is not payable under this subpart if it:

(a) Results from action by an enemy, or directly or indirectly from an act of

the armed services of the United States in combat;

(b) Is purely contractual in nature;

(c) Is for death or personal injury of a United States employee for whom benefits are provided under the Federal Employees' Compensation Act, or any other system of compensation where contribution is made or insurance premiums paid directly or indirectly by the United States on behalf of the injured employee;

(d) Is one for which a foreign country is responsible under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, or other similar treaty agreement;

(e) Arises from private or domestic obligations as distinguished from governmental transactions; or

(f) Is for damage to or loss of personal property of military personnel or civilian employees which is cognizable under the Military Personnel and Civilian Employees' Claims Act, as amended.

#### § 25.207 Time limitation on claims.

(a) A settlement authority may administratively settle and approve a claim for final payment within two years from the date that the cause of action accrues. Otherwise, the claim is barred. This two-year period is not extended by presenting a claim nor by negotiations or correspondence. The existence of an administrative claim does not extend the two year statute of limitations in 46 U.S.C. 745.

(b) If a complaint is filed in a Federal District Court before the expiration of the two-year period, an administrative settlement may be negotiated by the settlement authority only with the consent of the Department of Justice. Payment is made upon final dismissal of the complaint.

### Subpart C—Federal Tort Claims

AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11; 49 CFR 1.45(a)(2); 49 CFR 1.45(a)(3).

#### § 25.301 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United



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States arising out of Coast Guard activities under the Federal Tort Claims Act.

### § 25.303 Procedure.

A claim shall be presented and processed in accordance with 28 CFR Part 14. Should there be a conflict between the provisions of 33 CFR Part 25, Subpart A and the Department of Justice regulations in 28 CFR Part 14, the Department of Justice regulations govern.

## Subpart D—Military Claims

AUTHORITY: 10 U.S.C. 2733; 49 CFR 1.46(j).

### § 25.401 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States arising out of the activities of the Coast Guard under the Military Claims Act.

### § 25.403 Claims payable.

A claim arising at any place caused by military personnel or civilian employees of the Coast Guard acting within the scope of their employment, or otherwise incident to noncombat activities of the Coast Guard, whether or not negligence or intentional tort is shown, is payable under this subpart for:

- (a) Damage to or loss of real property, including damage or loss incident to the use and occupancy of real property by the Coast Guard;
- (b) Damage to or loss of personal property, including property bailed to the Coast Guard;
- (c) Damage to or loss of registered or insured mail while the mail is in the possession of the Coast Guard even though damaged or lost by criminal act; or
- (d) Death or personal injury.

### § 25.405 Claims not payable.

A claim is not payable under this subpart if it:

- (a) Results from action by an enemy or directly or indirectly from an act of the armed services of the United States in combat;
- (b) Is purely contractual in nature;

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(c) Results wholly or partly from the negligent or wrongful act of the claimant, claimant's agent, or claimant's employee, unless comparative negligence is applicable under local law;

(d) Is for death or personal injury of a United States employee for whom benefits are provided under the Federal Employees' Compensation Act, Longshoremen's and Harbor Workers' Compensation Act, or any other system of compensation where contribution is made or insurance premiums paid directly or indirectly by the United States on behalf of the injured employee;

(e) Is cognizable under Subpart C or E of this part;

(f) Is for reimbursement for medical, hospital, or burial services furnished at the expense of the United States;

(g) Is one of the following exceptions to the Federal Tort Claims Act, 28 U.S.C. 2680 (a), (b), (e), (f), (h), or (j). (However, a claim falling within the exception contained in 28 U.S.C. 2680 (b) is payable when not prohibited by paragraph (i) of this section.);

(h) Results from a specific risk which the claimant assumed in writing before the incident giving rise to the claim;

(i) Is for damage to or loss of a letter or postal matter while in the possession of the Postal Service;

(j) Is for rent, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the Coast Guard except as provided in § 25.403(a);

(k) Is for the taking of private property by trespass except for actual physical damage; or

(l) Is for personal injury or death of a member or civilian employee of the armed services of the U.S. whose death or injury was incident to service.

[CGD 80-033, 46 FR 27109, May 18, 1981, as amended by CGD 87-008b, 52 FR 25218, July 6, 1987]

### § 25.407 Time limitation on claims.

(a) A claim may be settled only if presented in writing within two years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not more than two years

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after the termination of the war or armed conflict.

(b) For the purposes of this section, a war or armed conflict is one in which an armed service of the United States is engaged. The dates of commencement and termination of an armed conflict will be as established by concurrent resolution of Congress or by determination of the President.

### § 25.409 Appeal.

(a) A claimant may submit an appeal, in writing, through the settlement authority disapproving the claim or approving the claim in part.

(1) The appeal shall set forth fully the legal or factual bases asserted as grounds for the appeal; and

(2) The appeal is permitted only if it is postmarked within 45 days after receipt of (i) notice of disapproval of the claim or (ii) offer of settlement in a reduced amount.

(b) The disapproval of a claim is final unless the claimant submits a request for reconsideration or an appeal in writing.

(c) Upon receipt of an appeal, the settlement authority examines it and forwards it with the claim file, opinions, and recommendations to the next higher settlement authority.

## Subpart E—Foreign Claims

AUTHORITY: 10 U.S.C. 2734; 49 CFR 1.46(b).

### § 25.501 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States by a foreign country, political subdivision or inhabitant thereof, for death, personal injury, damage to or loss of property occurring outside the United States, its territories, commonwealths, or possessions, caused by a military member or civilian employee of the Coast Guard, or otherwise incident to noncombat activities of the Coast Guard.

### § 25.503 Proper claimants.

(a) The claimant, or the decedent in a death case, must have been an inhabitant of a foreign country at the time of the incident giving rise to the claim

and must not be otherwise excluded by § 25.505. It is not necessary that a claimant be a citizen of, or legal domiciliary of the foreign country.

(b) A corporation or other organization doing business in a foreign country on a permanent basis may qualify as a proper claimant although organized under United States law.

(c) The government of a foreign country or a political subdivision thereof is a proper claimant unless excluded by waiver provisions of applicable international agreements.

### § 25.505 Claimants excluded.

(a) Civilian employees of the United States and members of the armed services of the United States and their dependents, who are in a foreign country primarily because of their own or their sponsor's duty status.

(b) Other citizens of the United States, its territories, commonwealths, or possessions, unless they can establish their status as inhabitants of the foreign country.

(c) An insurer or other subrogee.

### § 25.507 Claims payable.

(a) A claim is payable under this subpart if it was incident to a noncombat activity of the Coast Guard or was caused by:

(1) A military member of the Coast Guard;

(2) A civilian employee of the Coast Guard who is not a national of the country in which the incident occurred; or

(3) A civilian employee of the Coast Guard who is a national of the country in which the incident occurred if:

(i) The employee was within the scope of employment, or

(ii) An employer or owner of the property involved would be liable under local law.

(b) The fact that the act giving rise to a claim may constitute a crime does not, by itself, bar relief.

(c) Local law or custom pertaining to contributory or comparative negligence, and to joint tort-feasors, are applied to the extent practicable.

### § 25.509 Claims not payable.

A claim is not payable under this subpart if it:

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(a) Results from action by an enemy or directly or indirectly from an act of the armed services of the United States in combat;

(b) Is purely contractual in nature;

(c) Is for death or personal injury of a United States employee for whom benefits are provided under the Federal Employees' Compensation Act, the Longshoremen's and Harbor Workers' Compensation Act, or any other system of compensation where contribution is made or insurance premiums paid directly or indirectly by the United States on behalf of the injured employee;

(d) Is one for which a foreign country is responsible under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, or other similar treaty agreement;

(e) Arises from private or domestic obligations as distinguished from governmental transactions;

(f) Is a bastardy claim; or

(g) Involves a patent or copyright infringement.

### **§ 25.511 Time limitation on claims.**

A claim may be settled only if presented in writing within two years after it accrues. Under appropriate circumstances, a claim presented orally may be considered.

### **§ 25.513 Amount claimed.**

The claimant shall state the amount claimed in the currency of the country where the incident occurred or where the claimant resided at the time of the incident.

### **§ 25.515 Settlement and notice to claimant.**

If a claim is determined to be meritorious in any amount, a written acceptance and release or a claim settlement agreement shall be signed by the claimant before payment. The release executed by the claimant shall release the United States and also release the tort-feasor or the person who occasioned the damage, injury, or death.

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### **Subpart F—Claims Not Cognizable Under Other Law**

AUTHORITY: 10 U.S.C. 2737; 49 CFR 1.45(a)(2).

#### **§ 25.601 Scope.**

This subpart prescribes the requirements for the administrative settlement of claims against the United States under 10 U.S.C. 2737 incident to use of property of the United States and not cognizable under other law.

#### **§ 25.603 Claims payable.**

A claim for death, personal injury, or damage to or loss of real or personal property under this subpart is payable when caused by a military member or a civilian employee of the Coast Guard:

(a) Incident to the use of a vehicle of the United States at any place; or

(b) Incident to the use of any other property of the United States on a government installation.

#### **§ 25.605 Claims not payable.**

A claim is not payable under this subpart if it:

(a) Is legally recoverable by the claimant under a compensation statute or an insurance policy;

(b) Results wholly or partly from the negligent or wrongful act of the claimant, claimant's agent or employee;

(c) Is a subrogated claim;

(d) Is cognizable under any other provision of law or regulation administered by the Coast Guard; or

(e) Is for any element of damage pertaining to death or personal injury, other than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid by the United States.

#### **§ 25.607 Time limitation on claims.**

A claim may be settled only if presented in writing within two years after it accrues.

#### **§ 25.609 Settlement and notice to claimant.**

If a claim is determined to be meritorious in any amount, the claimant must sign a written acceptance and release or a claim settlement agreement before payment. Although larger claims may be considered, no claim

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may be approved or paid in an amount that exceeds \$1,000.00.

### Subpart G—Article 139, Uniform Code of Military Justice

AUTHORITY: 10 U.S.C. 939; 49 CFR 1.46(b).

#### § 25.701 Scope.

This subpart prescribes the requirements for the administrative settlement of claims under Article 139, Uniform Code of Military Justice, 10 U.S.C. 939, against military members of the Coast Guard for damage to property willfully caused by them or loss of property wrongfully taken by them.

#### § 25.703 Claims payable.

A claim for damage to or loss of real or personal property caused by a military member of the Coast Guard is payable under this subpart when the damage or loss results from:

- (a) Willful or intentional acts;
- (b) Wrongful taking; or
- (c) Riotous, violent, and reckless conduct or acts of depredation by an individual or group that evidences willfulness.

#### § 25.705 Claims not payable.

A claim is not payable under this subpart if it:

- (a) Is for death or personal injury;
- (b) Results wholly or partly from the grossly negligent, or reckless act of the claimant, claimant's agent or employee;
- (c) Is a subrogated claim;
- (d) Is for damage to or loss of property owned by the United States or property of a Nonappropriated Fund Activity;
- (e) Results from negligence;
- (f) Is for indirect or remote damages;
- (g) Is for damage to or loss of property resulting from the act or omission of a member of the Coast Guard acting within the scope of the member's employment;
- (h) Extends to damage or loss that results from the owner's failure to mitigate damages; or
- (i) Has been paid by a third party.

#### § 25.707 Time limitation on claims.

A claim may be settled only if presented within 90 days after it accrues unless good cause is shown for the delay.

#### § 25.709 Assessment limitation on claims.

A claim is permitted in any amount; however, this subpart prohibits any assessment that exceeds one-half of one month's basic pay against the pay of any offender.

### Subpart H—Pollution Removal Damage Claims

AUTHORITY: 33 U.S.C. 1321(j)(1)(A); 33 U.S.C. 1321(1); EO 11735, sec. 5 (a), (b)(3); 49 CFR 1.46(m).

#### § 25.801 Scope.

This subpart prescribes the requirements for the administrative settlement of claims against the United States for damage to or loss of property resulting from containment or removal activities during Phase III or IV of the National Contingency Plan, under the Federal Water Pollution Control Act, as amended. 33 U.S.C. 1321.

#### § 25.803 Claims payable.

A claim for damage to or loss of real or personal property is payable under this subpart if:

- (a) Caused by the United States, its employees, agents or contractors during containment, countermeasures, cleanup, mitigation, and disposal activities under the National Contingency Plan; and
- (b) In the exercise of care reasonable under the circumstances, the incident giving rise to the claim was necessary and the damage unavoidable.

#### § 25.805 Claims not payable.

A claim is not payable under this subpart if it:

- (a) Is for death or personal injury; or
- (b) Arises out of activities to contain or remove a discharge of oil or other hazardous polluting substance from a United States or foreign public vessel or federally controlled facility.

## PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

### Sec.

- 26.01 Purpose.
- 26.02 Definitions.
- 26.03 Radiotelephone required.
- 26.04 Use of the designated frequency.
- 26.05 Use of radiotelephone.
- 26.06 Maintenance of radiotelephone; failure of radiotelephone.
- 26.07 Communications.
- 26.08 Exemption procedures.
- 26.09 List of exemptions.

**AUTHORITY:** 14 U.S.C. 2, 33 U.S.C. 1201–1208; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170. Rule 1, International Regulations for the Prevention of Collisions at Sea.

**SOURCE:** CGD 71–114R, 37 FR 12720, June 28, 1972, unless otherwise noted.

### § 26.01 Purpose.

(a) The purpose of this part is to implement the provisions of the Vessel Bridge-to-Bridge Radiotelephone Act. This part:

- (1) Requires the use of the vessel bridge-to-bridge radiotelephone;
- (2) Provides the Coast Guard's interpretation of the meaning of important terms in the Act;
- (3) Prescribes the procedures for applying for an exemption from the Act and the regulations issued under the Act and a listing of exemptions.
- (b) Nothing in this part relieves any person from the obligation of complying with the rules of the road and the applicable pilot rules.

### § 26.02 Definitions.

For the purpose of this part and interpreting the Act:

*Act* means the “Vessel Bridge-to-Bridge Radiotelephone Act”, 33 U.S.C. sections 1201–1208;

*Length* is measured from end to end over the deck excluding sheer;

*Power-driven vessel* means any vessel propelled by machinery; and

*Secretary* means the Secretary of the Department in which the Coast Guard is operating;

*Territorial sea* means all waters as defined in § 2.22(a)(1) of this chapter.

*Towing vessel* means any commercial vessel engaged in towing another vessel astern, alongside, or by pushing ahead.

*Vessel Traffic Services (VTS)* means a service implemented under Part 161 of this chapter by the United States Coast Guard designed to improve the safety and efficiency of vessel traffic and to protect the environment. The VTS has the capability to interact with marine traffic and respond to traffic situations developing in the VTS area.

*Vessel Traffic Service Area* or *VTS Area* means the geographical area encompassing a specific VTS area of service as described in Part 161 of this chapter. This area of service may be subdivided into sectors for the purpose of allocating responsibility to individual Vessel Traffic Centers or to identify different operating requirements.

**NOTE:** Although regulatory jurisdiction is limited to the navigable waters of the United States, certain vessels will be encouraged or may be required, as a condition of port entry, to report beyond this area to facilitate traffic management within the VTS area.

(Rule 1, International Regulations for Preventing Collisions at Sea, 1972 (as rectified); EO 11964 (14 U.S.C. 2); 49 CFR 1.46(b))

[CGD 71–114R, 37 FR 12720, June 28, 1972, as amended by CGD 77–118a, 42 FR 35784, July 11, 1977; CGD 90–020, 59 FR 36322, July 15, 1994; USCG–2001–9044, 68 FR 42601, July 18, 2003]

### § 26.03 Radiotelephone required.

(a) Unless an exemption is granted under § 26.09 and except as provided in paragraph (a)(4) of this section, this part applies to:

- (1) Every power-driven vessel of 20 meters or over in length while navigating;
- (2) Every vessel of 100 gross tons and upward carrying one or more passengers for hire while navigating;
- (3) Every towing vessel of 26 feet or over in length while navigating; and
- (4) Every dredge and floating plant engaged in or near a channel or fairway in operations likely to restrict or affect navigation of other vessels except for an unmanned or intermittently manned floating plant under the control of a dredge.

(b) Every vessel, dredge, or floating plant described in paragraph (a) of this section must have a radiotelephone on board capable of operation from its navigational bridge, or in the case of a